



Decision and Reasons for Decision

Application Number: 53330 (2005/F0500)

Applicant: Mr P Henderson

Respondent: Queensland Law Society Inc.

Decision Date: 19 January 2007

Catchwords: Breach of confidence, section 46(1)(a) of the FOI Act; sufficiency of search; documents to which access may be refused, section 22(a) of the FOI Act; matter affecting personal affairs, section 44(1) of the FOI Act; information concerning business, professional, commercial or financial affairs, section 45(1)(c) of the FOI Act

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Reasons for Decision

Background

1. By letter dated 21 April 2005, the applicant applied to the Queensland Law Society (QLS) under the *Freedom of Information Act 1992* (Qld) (FOI Act) for access to documents held by the QLS in relation to Mr Peter Carne, Mr Murray Fox and retired Chief Judge Shanahan (Judge Shanahan). The specific documents requested in relation to each person are outlined below.
2. In his initial freedom of information (FOI) access application dated 21 April 2005, the applicant requested the following documents concerning Mr Carne:
 - *Application for position as CEO of QLS*
 - *His Curriculum Vitae*
 - *The selection criteria*
 - *His response to the selection criteria*
 - *Notes by each member of the interview panel*
 - *Sheet providing the ranking of the successful candidate in relation to all other short-listed candidates*
 - *Recommendation report by Secretary and/or other proposer to Council*
 - *All Council (including Executive Committee) minutes where the issue was raised*
 - *The voting register for each Council/Executive Council member*
 - *Letters of offer and acceptance including enclosures*
 - *The contract of employment*
3. The following documents regarding Mr Fox were also requested:
 - *The application for position of Financial Controller of QLS (circa 1988)*
 - *His Curriculum Vitae*
 - *The selection criteria*
 - *His responses to the selection criteria*
 - *Notes of each member of the interview panel*
 - *Sheet providing the ranking of successful candidate with all other candidates*
 - *All Council (including Executive) minutes where the issue was raised*
 - *The voting record of each Council/Executive Council member entitled to vote*
 - *Letters of offer and acceptance of offer position including enclosures*
 - *Initial and subsequent Contracts of Employment*
 - *Testimonial from his previous employer (Auditor-General)*
4. The following documents concerning Judge Shanahan were requested:
 - *The report he delivered on the question of recommended QLS reform and the document evidencing his Commission to advise*
 - *Tax invoice from him*
5. By letter dated 8 July 2005 Mr M Dunn, FOI Officer for the QLS, advised the applicant of his decision to refuse access to documents on the basis that documents responsive to the applicant's request either did not exist or were exempt from disclosure under section 44(1), 45(1)(c) or 46(1) of the FOI Act. Access to Mr Carne's contract of employment was refused on the basis that the contract came into

existence after the applicant's FOI application was received (see section 25(3) of the FOI Act). Access to the report prepared by Judge Shanahan entitled *Independent Review of Queensland Law Society's Complaints Process 2002* was refused under section 22(a) of the FOI Act on the basis that the report is publicly available on the QLS website.

6. By letter dated 12 July 2005 the applicant applied for internal review of Mr Dunn's decision.
7. By letter dated 26 July 2005 Mr M Hinton, FOI Internal Reviewer for the QLS, advised the applicant that he had conducted an internal review of Mr Dunn's decision and decided to affirm that decision.
8. By letter dated 12 August 2005 the applicant sought external review of Mr Hinton's decision, asserting that the documents were not exempt from disclosure and also that further documents responsive to the applicant's FOI request should exist in the possession or under the control of the QLS (the 'sufficiency of search' issue).

Steps taken in the external review process

9. The participants in the external review were contacted and the documents in issue (a total of 121 folios) were obtained and examined.
10. Folios 99–121 comprise a letter from the QLS to Judge Shanahan setting out the terms of his appointment as Chair of the Professional Standards Committee and tax invoices and time sheets submitted by the Judge to the QLS.
11. On 17 October 2005 an officer of the Office of the Information Commissioner (OIC) advised the QLS that, in the OIC's preliminary view, parts of folios 99 - 121 did not qualify for exemption under the FOI Act. On 25 October 2005 the QLS indicated that it agreed with this preliminary view and that parts of folios 99 - 121 could therefore be disclosed.
12. On 25 October 2005 Judge Shanahan was invited to become a participant in the external review under section 78 of the FOI Act, on the basis that the Judge was a person affected by the decision the subject of the review. Judge Shanahan was also advised of the OIC's preliminary view that parts of the relevant documents did not qualify for exemption. On 31 October 2005, Judge Shanahan indicated his agreement with this preliminary view.
13. On 31 October 2005 the applicant was advised that the QLS agreed with the preliminary view expressed by the OIC regarding the disclosure of parts of folios 99–121 and that the applicant should contact the QLS to make arrangements for accessing the documents.
14. By letter dated 4 November 2005 and received by the OIC on 7 November, the applicant advised that he would make arrangements to access the relevant parts of folios 99–121 and would advise the OIC of his views regarding the folios within a reasonable time. Further, the applicant indicated that he wished to obtain a signed copy of the report by Judge Shanahan pursuant to the FOI process, notwithstanding that the report is publicly available.
15. By two letters dated 4 November 2005, received by the OIC on 14 and 16 November 2005, the applicant made submissions regarding those parts of folios 99–121 remaining in issue. In particular, the applicant made submissions that

Judge Shanahan's Australian Business Number (ABN) was in the public domain and should therefore be disclosed. Following discussions between the OIC, Judge Shanahan and the QLS, Judge Shanahan's ABN was disclosed to the applicant.

16. By letter dated 9 January 2006, Assistant Commissioner Moss (AC Moss) advised the applicant of her preliminary view in relation to the exemptions claimed by the QLS to apply in relation to the documents. In relation to the sufficiency of search issue, the applicant was advised that the QLS had been requested to undertake further searches and inquiries to locate any additional documents that fell within the terms of the applicant's initial FOI access application. The applicant was invited to make submissions regarding the preliminary view by 30 January 2006.
17. In a letter dated 25 January 2006 the applicant advised AC Moss that he disagreed with her preliminary view of 9 January 2006 but was not able to make submissions at that time.
18. On 9 May 2006 and 6 June 2006, Assistant Information Commissioner White (AC White) wrote to the applicant and invited him to provide any additional submissions and material in response to the OIC's preliminary view letter dated 9 January 2006. No such submissions or material were provided.
19. On 20 January 2006 the QLS provided submissions regarding the searches conducted by the QLS for documents falling within the applicant's FOI application. By letter dated 6 July 2006 the QLS provided further submissions in relation to the sufficiency of search issue. In those submissions the QLS provided details of what files were searched, and provided an explanation for the absence of any documents in relation to the appointment of Mr Carne as the CEO of the QLS (other than the contract of employment referred to in paragraph 5 above). The QLS also advised that as a result of further searches it had located minutes of Council meetings held on 20 March 2005 and 26 May 2005 that referred to confidential discussions to be held by the President of the QLS and the Council regarding the status of the CEO and the appointment of Mr Carne.
20. By letter of 11 July 2006 AC White advised the applicant of the nature of the QLS submissions in relation to the sufficiency of search issue, and further advised that in her preliminary view, the searches conducted by the QLS were reasonable and that there were no further documents responsive to the initial access application in the possession or under the control of the QLS. The applicant was invited to provide any submissions in relation to the sufficiency of search issue by 2 August 2006. AC White also advised the applicant that he should contact the QLS to obtain copies of the relevant portions of the Council minutes referred to above.
21. By letter of 5 December 2006 I invited the applicant to provide any further submissions, by 19 December 2006, in response to the preliminary views set out in the correspondence from AC Moss dated 9 January 2006 and AC White dated 11 July 2006. In response to a request from the applicant, the timeframe for submissions was extended to 2 January 2007. No such submissions have been provided.

Matter in issue

22. The matter remaining in issue in this external review can be categorized as follows:
 - a. **Category 1 Matter:** folios 1–36 which comprise a contract of employment for Mr Carne, employment agreements for Mr Fox and an internal QLS

- memorandum dated relating to the terms and conditions of employment of Mr Fox;
- b. **Category 2 Matter:** folios 37–98 comprising the report by Judge Shanahan titled *Independent Review of the Queensland Law Society's Complaints Process 2002*;
 - c. **Category 3 Matter:** parts of folios 99–121 comprising the private residential address of Judge Shanahan and details of the Judge's professional charge out rates, as disclosed in a letter from the QLS to Judge Shanahan setting out the terms of his appointment as Chair of the Professional Standards Committee and tax invoices and time sheets submitted by the Judge to the QLS.

Category 1 Matter

Contract of employment for Mr Carne

23. In response to the applicant's FOI application for documents concerning the appointment of Mr Carne as Chief Executive Officer of the QLS, the QLS located a contract of employment dated 29 April 2005.
24. The applicant's FOI access application was dated 21 April 2005 and was marked as having been received by the QLS on 26 April 2005. Under section 25(3) of the FOI Act, an FOI access application is taken only to apply to documents that are in existence on the day the application was received. Accordingly, I am of the view that Mr Carne's contract of employment dated 29 April 2005 falls outside the terms of the applicant's initial FOI access application, such that the QLS is entitled to refuse access to this document.

Employment agreements for Mr Fox and internal QLS memorandum about the terms and conditions of Mr Fox's employment

25. The internal memorandum and the employment agreements entered into between Mr Fox and the QLS set out the terms and conditions of Mr Fox's employment with the QLS. The employment agreements are signed by a representative of the QLS and by Mr Fox.
26. The QLS decided that these documents qualified for exemption under section 44(1) or 46(1) of the FOI Act, or under both those sections.
27. Section 46(1) of the FOI Act provides:

46(1) Matter is exempt if—

(a) its disclosure would found an action for breach of confidence;...

28. Information Commissioner Albietz explained the requirements for exemption under section 46(1)(a) of the FOI Act in his decision in *Re 'B' and Brisbane North Regional Health Authority* (1994) 1 QAR 279. The test for exemption is to be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring suit to enforce an obligation of confidence said to be owed to that plaintiff, in respect of information in the possession or control of the agency faced with an application, under section 25 of the FOI Act, for access to the information in issue. I am satisfied that, in respect of the internal memorandum and the employment agreements, there is an identifiable plaintiff - namely Mr Fox - who would have standing to bring an action for breach of confidence.

29. At paragraph 43 of *Re 'B'*, Information Commissioner Albietz said that the action for breach of confidence may be based on a contractual or equitable obligation. There is no express stipulation in the internal memorandum or in the employment agreements that they be treated confidentially. An action for breach of confidence could however be based on an implied term in the contract, an equitable obligation of confidence, or on both an implied term and an equitable obligation. Moreover, it appears that the tests for establishing the existence of an implied contractual obligation of confidence, and an equitable obligation of confidence, are essentially the same: see *Re 'B'* at pages 297–300, paragraphs 46–47 and 49–52; *Re Hopkins and Department of Transport* (1995) 3 QAR 59 at pages 68–69, paragraphs 24–25.
30. There are five cumulative requirements for protection in equity of allegedly confidential information:
- a. it must be possible to specifically identify the information in order to establish that it is secret, rather than generally available information (see *Re 'B'* at pages 303–304, paragraphs 60–63);
 - b. the information in issue must have 'the necessary quality of confidence'; ie, the information must not be trivial or useless information, and it must have a degree of secrecy sufficient for it to be the subject of an obligation of conscience (see *Re 'B'* at pages 304–310, paragraphs 64–75);
 - c. the information must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it (see *Re 'B'* at pages 311–322, paragraphs 76–102);
 - d. disclosure to the applicant for access would constitute an unauthorised use of the confidential information (see *Re 'B'* at pages 322–324, paragraphs 103–106); and
 - e. disclosure would be likely to cause detriment to the confider of the confidential information (see *Re 'B'* at pages 325–330, paragraphs 107–118).
31. Commissioner Albietz has previously considered, in detail, the application of section 46(1)(a) of the FOI Act to an employment agreement entered into between the QLS and an employee, and to notes recording the terms and conditions of the offer of employment to that employee: see *Re Henderson and Queensland Law Society* (S113/99; 8 June 2001) at paragraphs 43–85. In that decision, the Information Commissioner decided that the employment agreement and the notes recording the terms and conditions of the offer of employment qualified for exemption under section 46(1)(a) of the FOI Act.
32. I am unable to identify any basis for distinguishing the documents that are in issue in this review, from the documents considered in *Re Henderson*. Accordingly, I adopt the reasoning in *Re Henderson* and am of the view that the internal memorandum and the employment agreements relating to Mr Fox qualify for exemption under section 46(1)(a) of the FOI Act.
33. Given my view that the internal memorandum and employment agreements are exempt under section 46(1)(a) of the FOI Act it is unnecessary for me to consider whether they are also exempt under section 44(1) of the FOI Act as contended by the QLS.

Sufficiency of search issues

34. The applicant's initial FOI access application sought access to various categories of documents in relation to the recruitment and appointment of Mr Carne and Mr Fox (see paragraphs 2–3 above). In response to this aspect of the FOI application, the QLS located the documents referred to in paragraph 22.a above.
35. In his internal review application, the applicant raised a sufficiency of search issue. In his internal review decision, Mr Hinton of the QLS stated that 'searches have been made of personnel files, Council and Executive Council records and finance records' and that no further documents responsive to the FOI access application existed within the possession, or under the control, of the QLS.
36. In his application for external review the applicant requested that the review of Mr Hinton's decision include the sufficiency of search issue.
37. Commissioner Albietz explained the principles applicable to sufficiency of search cases in *Re Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464 (pp.469–470, paragraphs 18 and 19) as follows:

18. It is my view that in an external review application involving 'sufficiency of search' issues, the basic issue for determination is whether the respondent agency has discharged the obligation, which is implicit in the FOI Act, to locate and deal with (in accordance with Part 3, Division 1 of the FOI Act) all documents of the agency (as that term is defined in s.7 of the FOI Act) to which access has been requested. It is provided in s.7 of the FOI Act that:

'document of an agency' or 'document of the agency' means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes –

- a. a document to which the agency is entitled to access; and
- b. a document in the possession or under the control of an officer of the agency in the officer's official capacity;

19. In dealing with the basic issue referred to in paragraph 18, there are two questions which I must answer:

- a. *whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency (as that term is defined in s.7 of the FOI Act);*
and if so
- b. *whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of a particular case.*

38. On 9 January 2006 the OIC asked the QLS to provide further information about searches conducted by the QLS and reasons for the QLS's view that there were no further responsive documents.
39. On 20 January 2006 the QLS provided extensive submissions in relation to the searches conducted by the QLS. As to the general search processes adopted, the QLS advised as follows:

A formal internal request was made by the FOI Officer to the Finance, Human Resources and Secretariat departments of the Society for documents relating to the FOI Application by Mr Henderson to ensure that the entire holdings of the Law Society were searched, both electronically and in paper form. Additionally a search was conducted by an administration assistant of the Society's entire database and file system to locate any documents of relevance.

40. In relation to searches conducted for documents relating to Mr Fox, the QLS advised:

The HR department undertook a search of their records, including Mr Fox's personnel file. The personnel file was also independently searched by the FOI Officer. The HR Manager advised that at the relevant time it was not the Society's practice to develop selection criteria or to undertake formal interview processes wherein reports on candidates were prepared. A search of the personnel file did not disclose any curriculum vitae supplied by Mr Fox at the relevant time or any other documents relating to the request beyond the located contracts of employment.

The Society's Secretariat searched their records, including the Society's repository of Council Minutes and Executive Committee minutes for references to Mr Fox's appointment at the relevant time. No references to Mr Fox's appointment as Financial Controller were located.

A search of the file system and the Society's database did not locate any further documents concerning this appointment.

41. In relation to searches conducted for documents relating to Mr Carne, the QLS advised:

The HR department undertook a search of their records, including Mr Carne's personnel file. The personnel file was also independently searched by the FOI Officer. The HR Manager advised that there was no formal advertisement of the position of CEO of the Society, the appointment was conducted by a Panel selected by Council and undertaken off-site from the Society. No records were received in connection with Mr Carne's appointment by the Society's HR department apart from Mr Carne's contract of employment.

The society's Secretariat searched their records, including the Society's repository of Council Minutes and Executive Committee Minutes for references to Mr Carne's appointment at the relevant time. No references to Mr Carne's appointment were located.

A search of the file system and the Society's database did not locate any further documents.

The FOI Officer and the President's Secretary conducted a global search of the then President's email system, including the deleted items, to locate documents concerning Mr Carne's appointment and no items were found relating to this request. A further search request was made of Mr Carne's former firm for any email correspondence concerning his employment. Mr Carne's firm advised that all email records sent by Mr Carne had been deleted by the firm prior to the request.

42. The QLS was later asked to provide submissions as to why no documents had been identified in relation to Mr Carne's appointment as CEO, particularly given the seniority of the position, other than his contract of employment. By submissions dated 6 July 2006 the QLS advised that it appeared that confidential discussions were held between the President and Council members concerning Mr Carne's appointment, and that neither the appointment process nor the appointment were minuted. It advised that the discussions dealt with sensitive issues concerning the scope of the role of the incumbent CEO / Financial Officer and the enlarged role envisaged for the new CEO, and that this was the reason why the discussions were confidential in nature. The QLS also advised that as a result of further searches it had located minutes of Council meetings held on 20 March 2005 and 26 May 2005 that referred to confidential discussions to be held by the President of the QLS and the Council regarding the status of the CEO and the appointment of Mr Carne.

43. The QLS's FOI Officer further advised as follows:

Additionally, I have been informed that the selection panel did receive some application documents from certain applicants, including a curriculum vitae received from Peter Carne, and that these documents were all kept together off-site from the Society due to the confidential nature of the process. No member of the Society's staff was privy to the process in order to collate received correspondence for the purposes of the record. At some time during or after the conclusion of the process these documents were misplaced and enquiries with each of the selection panel members has failed to locate these documents.

44. I accept the explanation provided by the QPS for the absence of any further documents concerning the appointment of Mr Carne as CEO, and it appears from the QLS's submissions outlined above that the QLS has conducted comprehensive searches of both hard copy and electronic records to locate documents responsive to the applicant's FOI access request. I am of the view that the searches conducted have been reasonable in the circumstances and I am satisfied that there are no other records held by the QLS that could be searched for the purposes of locating documents responsive to the applicant's request. In coming to this conclusion, I have taken note of the fact that the appointments to the QLS were not subject to the *Public Service Act 1996* (Qld) and therefore the requirement for merit based selection that apply to agencies subject to that Act, did not apply to the QLS. Accordingly, it is not unusual that documents such as selection criteria and ranking for proposed appointees do not exist. I am persuaded, on the basis of the extensive searches conducted by the QLS, that no additional documents exist in the possession or under the control of the QLS and that the searches undertaken by the QLS have been reasonable in all the circumstances of the case.

Category 2 Matter

Report by Judge Shanahan

45. The QLS refused to grant the applicant access to the report under section 22(a) of the FOI Act, on the basis that the report is publicly available on the QLS website.

46. Section 22(a) of the FOI Act provides as follows:

22 Documents to which access may be refused

An agency or Minister may refuse access under this Act to—

(a) a document the applicant can reasonably get access to under another enactment, or under arrangements made by an agency, whether or not the access is subject to a fee or charge; or ...

47. I have searched the QLS website and I am satisfied that an identical copy of the report which is in issue in this review (which is not signed) is readily accessible free of charge to any interested member of the public on the QLS website. Accordingly, I am of the view that the QLS is entitled to exercise the discretion conferred on it by section 22(a) of the FOI Act to refuse access to the report under the FOI Act, on the basis that the report is reasonably available under arrangements made by the QLS.

Category 3 Matter

48. The matter remaining in issue in category 3 comprises the private residential address of Judge Shanahan and details of Judge Shanahan's professional charge-out rates (based on both full and half days) for the work performed for the QLS.
49. The QLS decided that the matter remaining in issue in category 3 qualified for exemption under sections 44(1), 45(1)(c) and 46(1) of the FOI Act.
50. Section 44(1) of the FOI Act provides:

44 Matter affecting personal affairs

(1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

51. In applying section 44(1) of the FOI Act, the first question to ask is whether disclosure of the matter in issue would disclose information concerning the personal affairs of a person other than the applicant for access. If that is the case, a public interest consideration favouring non-disclosure is established, and the matter in issue will be exempt, unless there are public interest considerations favouring disclosure which outweigh the public interest considerations favouring non-disclosure.
52. In *Re Stewart and Department of Transport* (1993) 1 QAR 227, Commissioner Albietz discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act (see pages 256–267, paragraphs 79–114, of *Re Stewart*). In particular, Commissioner Albietz said that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well-accepted core meaning which includes:
- family and marital relationships;
 - health or ill health;
 - relationships and emotional ties with other people; and
 - domestic responsibilities or financial obligations.
53. Applying the principles established in prior decisions concerning the application of section 44(1) of the FOI Act (see *Re Stewart*, *Re Pope and Queensland Health* (1994) 1 QAR 616 and *Re Baldwin and Department of Education* (1996) 3 QAR 251), I am of the view that the private residential address of Judge Shanahan is properly characterised as information concerning the personal affairs of Judge Shanahan, and

is therefore *prima facie* exempt from disclosure under section 44(1), subject to the application of the public interest balancing test which is contained in section 44(1).

54. In his letter dated 4 November 2005 and received by the OIC on 14 November 2005, the applicant contended that the private residential address of Judge Shanahan is in the public domain because it is listed in the white pages telephone directory, and that, accordingly, there is no valid basis for a claim of exemption of this information under the FOI Act. I do not accept the applicant's contention. While the privacy interest attaching to the information may have been diminished through its availability in the public domain, it has not been entirely eliminated for the purposes of the application of section 44(1) of the FOI Act. As I am unable to identify any public interest considerations favouring disclosure to the applicant, even the diminished privacy interest of Judge Shanahan prevails, such that disclosure of the information would not, on balance, be in the public interest.
55. Section 45(1)(c) provides:

45(1) Matter is exempt if—

...
(c) *its disclosure—*

- (i) *would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and*
- (ii) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government;*

unless its disclosure would, on balance, be in the public interest.

56. The correct approach to the interpretation and application of section 45(1)(c) is explained in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at pages 516–523 (paragraphs 66-68). In summary, matter will be exempt under section 45(1)(c) of the FOI Act if:
- a. the matter in issue is properly to be characterised as information (other than trade secrets or information mentioned in sub-paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person (section 45(1)(c)); and:
 - b. disclosure of the matter in issue could reasonably be expected to have either of the prejudicial effects contemplated by section 45(1)(c)(ii), namely:
 - i) an adverse effect on the business, professional, commercial or financial affairs of the agency or other person, which the information in issue concerns; or
 - ii) prejudice to the future supply of such information to the government;

unless disclosure of the matter in issue would, on balance, be in the public interest.
57. Parts of the category 3 matter that remain in issue comprise the daily (and half daily) rate charged by Judge Shanahan in performing legal services for the QLS (or

comprise information which would enable calculation of the rate charged by Judge Shanahan).

58. Consistent with the decision in *Re Macrossan & Amiet and Queensland Health & Ors* (No. S 116/99, 27 February 2002, unreported, at paragraphs 104–110), I am of the view that disclosure of Judge Shanahan's daily (and half daily) rate of charge for the QLS (or information by which the rate could be calculated) could reasonably be expected to have an adverse effect on his business, professional, commercial or financial affairs, given the competitive market in which legal professionals operate.
59. By letter dated 4 November 2005 and received by the OIC on 14 November 2005, the applicant made the following submission in support of a public interest consideration favouring disclosure of the information in issue, namely:

Mr Shanahan's tax invoices claim monies paid from the public purse (Qld Law Society is a statutory authority in Queensland Government). Details of invoiced services for which public monies were paid therefore cannot be exempt from access.

60. In response to a request from the OIC the QLS's submissions of 6 July 2006 (referred to in paragraph 19 above) also addressed this issue. The QLS advised as follows:

At the time of Mr Henderson's application (April 2005) the position of CEO was funded solely from member contributions and attracted no regulatory funding, although this has subsequently changed.

The regulatory functions of the Society are funded through the compulsory fees that all solicitors in Queensland must pay for the issue of their practising certificate as well as a yearly application for a top-up grant from the Legal Practitioners Interest on Trust Accounts Fund (LPITAF) to meet the shortfall between funds collected via practising certificates and the annual budgeted expenses for the operation of the regulatory functions of the Society. LPITAF is a fund established under the Legal Profession Act 2004 to receive interest monies payable on the funds held by Queensland solicitors in trust accounts for their clients. Section 208 of the Act establishes the fund and provides that amounts received by the fund are not received or held for the State.

On the basis of the above, the Queensland Law Society does not operate on State funding.

61. It appears from the information the QLS has provided that the public interest consideration the applicant has identified - ie a general public interest in seeing how taxpayers' money is spent - does not apply to the QLS having commissioned Judge Shanahan's report. I note that during the course of this external review the applicant was given access to documents which contain details of the gross payment to Judge Shanahan. Even if taxpayers' money had been spent on the Judge's fees, I consider that in the circumstances of this case, where no other public interest consideration has been identified, the disclosure of the gross payment made to Judge Shanahan would be sufficient to satisfy any such public interest.
62. Accordingly, I am unable to identify any public interest considerations of sufficient weight to favour the disclosure of the daily (and half daily) rate charged by Judge Shanahan for the work he performed for the QLS, or the disclosure of information by which that rate could be calculated. It is my view that this matter qualifies for exemption under section 45(1)(c) of the FOI Act.

63. Given my conclusions that the private residential address of Judge Shanahan is exempt under section 44(1) of the FOI Act and that the rate charged by the Judge in performing services for the QLS (and information by which that rate could be calculated) is exempt under section 45(1)(c) of the FOI Act, it is unnecessary for me to consider the QLS' contention that the matter is also exempt under section 46(1).

Decision

64. For the reasons outlined above, in relation to the matter in issue in this external review, I affirm the decision under review (being the decision of Mr M Hinton dated 26 July 2005).
65. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

M Gittins
Assistant Information Commissioner

Date: 19 January 2007